August 3, 2000

D.T.E. 99-102

Investigation by the Department of Telecommunications and Energy of Verizon New England, Inc.'s Fifth Annual Price Cap Compliance filing, filed with the Department on November 17, 1999, tariff revisions to M.D.T.E. No. 10 to become effective January 17, 2000.

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I. INTRODUCTION

On November 17, 1999, Verizon New England, Inc. d/b/a Verizon Massachusetts (formerly New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts) ("Verizon" or "Company") filed revisions to its tariff M.D.T.E. No. 10, with the Department of Telecommunications and Energy ("Department"), in compliance with NYNEX Price Cap, D.P.U. 94-50 (1995). The filing constitutes the Company's fifth annual filing under price cap regulation. The Department docketed this matter as D.T.E. 99-102. The Company proposed that the tariff revisions become effective on January 17, 2000, unless suspended or disallowed by the Department.

Verizon proposed a $27.07 million reduction in overall revenue, representing a 1.51 percent reduction in intrastate revenues (Compliance Filing at 1). The reduction includes a $6.16 million decrease in revenues for residential customers, and a $20.9 million decrease in revenues for business customers (id.). The filing also seeks an adjustment in the productivity factor to remove retail Service Quality penalties applied in the 1995 and 1996 price cap filings (id. at Section A, Tab 1, page 1). The net result of this adjustment is to lower the revenue reduction by $20.87 million to the proposed reduction amount of $27.07 million (id. at Section A).

Pursuant to notice duly issued, the Department held a public hearing at its offices on January 5, 2000, to afford the public an opportunity to comment on the Company's compliance filing. The Attorney General of the Commonwealth intervened as of right, pursuant to G.L. c. 12, § 11E. The Department granted the petitions to intervene of AT&T

Communications of New England, Inc. ("AT&T"), and New England Public Communications Council, Inc. ("NEPCC").[(1)]

On January 14, 2000, the Department issued an Order in which it declined to suspend the tariff, and the proposed tariff revisions went into effect on January 17, 2000, subject to further investigation. Bell Atlantic Fifth Price Cap Compliance Filing, D.T.E. 99-102, Interlocutory Order on Suspension (January 14, 2000). In the Order, the Department stated that based on the arguments made by intervenors and the Company's showing to date, the Department needed to investigate the Company's proposed productivity factor adjustment. Interlocutory Order on Suspension at 7.

At the procedural conference held on January 2, 2000, the Department indicated that there were no matters of factual dispute presented by the parties in their previously-filed comments, and therefore set a schedule for briefing in this matter. At the request of the

Attorney General, the Department allowed time for parties to submit a request for evidentiary proceedings, in which parties were to identify those issues to be adjudicated, and propose a schedule for evidentiary proceedings. The Attorney filed such a request on January 21, 2000, and Verizon responded on January 26, 2000.[(2)] On February 14, 2000, the Hearing Officer issued a ruling denying the Attorney General's request for evidentiary hearings. The Hearing Officer found that the issues presented by the Attorney General did not consist of issues for which the facts were disputed, found that the Attorney General's issues could be adequately addressed through briefing, and established a briefing schedule.

On March 6, 2000, Verizon ("Verizon Brief") and the Attorney General ("Attorney General Brief") filed briefs. On March 20, 2000, the same parties filed reply briefs ("Verizon Reply Brief" and "Attorney General Reply Brief").

II. SUMMARY OF THE COMPLIANCE FILING

The Company's November 17, 1999 Compliance filing revises one of its tariffs, M.D.T.E. No. 10.[(3)] Among other changes, the filing seeks an adjustment in the productivity factor to remove from this and future filings the effect of Service Quality penalties applied in the 1995 and 1996 price cap filings (Compliance Filing at Section A, Tab 1, page 1). The filing also proposes to eliminate the Touch-Tone charge for business customers (id. at Section B, Tab 1, page 5 of 8).

III. SERVICE QUALITY PENALTIES

A. Introduction

Under the Department's Price Cap Plan ("Plan"), the price regulation index ("PRI") is the mechanism that establishes a ceiling on the cumulative change in aggregate prices permissible under the Plan. The annual change in the PRI [(4)] governs the amount by which rates must decrease or rates may increase in the annual filings. The PRI is adjusted annually for the annual change in the GDP-PI, the productivity factor, and any exogenous cost changes.[(5)] The productivity factor component of the PRI is fixed at 4.1 percent but is potentially subject to a service-quality increase in each annual filing.

Verizon failed to meet the Department's retail performance standards in the first two annual filings (1995-1996), and was penalized with a higher productivity factor in those filings. The effect of these service quality penalties was an increase in the productivity factor, which is factored into the PRI, resulting in a lower PRI. The productivity factor reverted back to 4.1 percent in later filings. However, a lower PRI has the impact of lowering the level of rate changes that the Company may implement for that year and subsequent years. Verizon proposes to reverse the effect of these past service quality penalties on its allowed rate changes in subsequent years in which it did not incur any service quality penalties by lowering the productivity factor in this filing, as described below.

B. Positions of the Parties

1. Verizon

Verizon proposes to lower the productivity factor of 4.1 percent by 1.16 percent (the sum of 0.83 percent and 0.33 percent penalties for 1995 and 1996, respectively) to remove embedded service quality penalties (Verizon Brief at 5). Verizon argues that it is continuing to incur a penalty for service deficiencies that occurred in prior years, and that the level of the penalty associated with that period grows each year and will continue to do so unless corrected (id. at 6). According to the Company, so far it has been penalized by approximately $75.3 million (over $55 million in excess of the annual penalty amounts) for the 1994-1995 service deficiencies and the amount is compounding annually by an estimated $20 million (id. at 6, 9). Verizon argues that its proposed PRI adjustment is intended to stop this compounding effect from continuing into the future (id. at 9). The Company notes that it is not seeking to recover the $55 million in additional revenue reductions that are already embedded in rates but its proposal is intended solely to stop the compounding effect of embedded past service penalties from continuing into the future (id.). This proposed adjustment, according to Verizon, is consistent with the terms of the Price Cap Plan and with the policy basis for the Department's adoption of the service-penalty component of the Price Cap Plan, and is also fair and reasonable (id.).

The Company reiterates that in the Price Cap Plan, the Department did not provide for such a never-ending penalty because the penalty was meant for deficient performance associated with the annual filing in which the penalty was taken, and not all future filings (id. at 9-10). According to the Company, in D.P.U. 94-50, the Department ruled that any resulting increase in the productivity factor shall not carry over to any future annual filings (id. at 10, citing D.P.U. 94-50, at 237, n.137). Without its proposed adjustment, Verizon states that it will be penalized over the entire term of the Plan in ever increasing amounts for service deficiencies that occurred only in the early years of the Plan and which have since been corrected (id. at 11). The Company concludes that this result is inconsistent with the Plan's objective to make the penalty proportionate to the offense, and is confiscatory (id. at 9).

Verizon disagrees with the Attorney General's contention regarding the proposed PRI adjustment (id. at 11). The Company notes that the Attorney General does not refute that, once a service quality adjustment is made to the PRI, it is perpetuated in subsequent filings because it becomes embedded in the PRI (Verizon Reply Brief at 2). Verizon indicates that the Attorney General also does not dispute that the Company's proposed PRI adjustment is limited solely to removing amounts embedded in that index for past service quality penalties (id.). Moreover, contrary to the Attorney General's claim that an adjustment contradicts past implementation of the Plan, Verizon argues that nothing in the Department's prior Price Cap Plan decisions address this issue, either directly or indirectly, because the matter was not raised in those cases (id. at 3). Furthermore, Verizon contends that the Attorney General's argument in this case contradicts his own position in D.P.U. 94-50, where he stated that, if the Company subsequently corrects the

problems, the offset or penalty associated with poor service quality would be eliminated and that the penalty factor should be proportional to the degree of deterioration of the Company's service quality (id. at 5-6, citing D.P.U. 94-50, AG Exhibit 795, at 98, ll. 20-22).

2. Attorney General

The Attorney General argues that the proposed reduction of the productivity factor from 4.1 percent to 2.94 percent does not comply with the Department's order in D.P.U. 94-50, and is not consistent with the subsequent implementation of that Order (Attorney General Brief at 4). The Attorney General asserts that, contrary to Verizon's claim, there have been no carryovers of service quality penalties in the past, and therefore there is no need for any correction (id. at 5). According to the Attorney General, the operative language in the Department's D.P.U. 94-50 Order concerns increases to the productivity factor and does not apply to decreases in the future level of the PRI (id. at 6, citing D.P.U. 94-50, at 237 n.137). According to the Attorney General, Verizon proposes to reverse reductions in the PRI that resulted from past increases in the productivity factor (id.). The Attorney General claims that the productivity factor is reset each year to 4.1 percent, as required by the Order; there is no provision in the Order for the PRI to be reset to the level it would have attained but for earlier service quality penalties (Attorney General Reply Brief at 2). The Attorney General, therefore, argues that the Plan specified by the Department has been applied correctly and the Company should not be allowed to modify the clear terms of the Department's Order in D.P.U. 94-50 (Attorney General Brief at 6). The Attorney General concludes that there is no reason to go beyond the express language of the Price Cap Order (Attorney General Reply Brief at 2).

The Attorney General also states that, contrary the Company's claim, the service quality penalties have no substantial impact on Verizon's monopoly service revenues, because $75 million out of $8.5 billion of revenue over a five year period, which is well under one percent, is far from excessive and could not be considered confiscatory (id.). According to the Attorney General, a plan that provides for modest but lasting consequences cannot be called unfair, unreasonable, or illogical (id.).

C. Analysis and Findings

Recognizing the incentive for the regulated firm to reduce costs in a price cap regime, the Department, in D.P.U. 94-50, at 235, noted the importance of including some form of protection against a reduction in service quality by Verizon for monopoly customers. As the Department clearly articulated in the Order, the purpose of a service quality component of a price cap is neither to penalize nor reward Verizon, but to ensure that the Company does not act on its incentive to cut costs to the detriment of service quality. D.P.U. 94-50, at 236 n.134. Accordingly, the Department required Verizon to maintain a certain level of retail service; failure to do so would result in an increase of one-twelfth of one percent in the productivity factor in the subsequent annual filing. D.P.U. 94-50, at 237.[(6)] This direct service quality penalty was specifically addressed and discussed in the Price Cap Order.

There is also an indirect service quality penalty, which is the result of how the productivity offset is used as an input to calculation of the PRI, and which perpetuates in any filings made after a year in which a direct service quality penalty is incurred. This indirect service quality penalty was not specifically addressed in the Price Cap Order, but it results from application of the pricing rules. Verizon has articulated, in its Brief (Scenarios 1, 2 and 3), how this indirect service quality penalty is perpetuated in subsequent filings.

The operation of the PRI formula is defined in the Price Cap Order:

2. Price Regulation Index

The Price Regulation Index ("PRI") reflects the percent

change in the Gross Domestic Product-Price Index ("GDP-PI")

minus the productivity factor, plus or minus exogenous

changes. The PRI initially would be set at 100 and is

calculated as follows:

$PRI_{new} = PRI_{current} * (1+PRI\ adjustment/100)$

where PRI adjustment = percent change in GDP-PI

minus the productivity

factor, plus or minus

exogenous changes.

D.P.U. 94-50, at 75. Because the productivity factor is a component in the calculation of the PRI, any increase in the productivity factor to take account of any service quality penalty in a particular year automatically is factored into the PRI, which lowers the "baseline" for rate changes in all subsequent years. Unless an adjustment is made to the productivity factor or PRI in the following years, the service penalty is indirectly carried to future filings in the form of a lower base PRI (i.e., current PRI) that is used in calculating the new PRI. We agree with Verizon that the current operation of the price cap formula leads to the result described.

However, we view Verizon's proposed adjustment to the productivity factor as an attempt to change the price cap formula and pricing rules approved in D.P.U. 94-50. There is no provision in the pricing rules for adjusting either the PRI or the productivity factor to remove the indirect service quality penalty.[(7)] The Price Cap Order allows for modifications to the price cap plan only in two instances: "(1) to reflect the impact of federal or state legislation or court decisions enacted or issued subsequent to the Department's approval of the plan; or (2) to seek a less structured form of regulation or deregulation of [Verizon's] operations based upon changes in market conditions." D.P.U. 94-50, at 117. Verizon's proposed adjustment to the productivity factor does not fall within either of the allowable criteria for changes to the price cap plan.

While it is correct that carrying over the service quality penalty into subsequent years was not mentioned in the Price Cap Order as a specifically-contemplated outcome, an important feature of the pricing rules is that their operation is defined by what is enumerated in the pricing rules--not by any party's definition of what is a fair outcome or by speculation about what the Department intended. Since the Price Cap Order was issued, we have rejected numerous attempts of parties to argue for disallowance of Verizon's proposed price changes on the basis of standards and goals that are not defined in the pricing rules.[(8)] Verizon itself noted that compliance with the pricing rules constitutes a prima facie showing that the rates are just and reasonable (id., citing D.T.E. 99-102, at 8, Interlocutory Order on Suspension (January 14, 2000)). Under the terms of the Price Cap Order, we may not now make modifications or exemptions to the pricing rules on the basis of what Verizon contends was the Department's intent in the Price Cap Order, regardless of what is required by strict application of the pricing rules. If we did so, it would undermine our steadfast determination that the reasonableness of price changes are defined solely by application of the pricing rules.

As noted earlier, Verizon contends that, in D.P.U. 94-50, the Department ruled that any resulting increase in the productivity factor shall not carry over to any future annual filings (Verizon Brief at 10, citing D.P.U. 94-50, at 237, n.137). The footnote cited by Verizon in support of this contention reads: "Any resulting increase to the productivity offset shall not carry over to any future annual filings." That statement refers only to the direct service quality penalty--not to the indirect effect of a lower baseline PRI. In other words, this means that an increased productivity factor (i.e., one that is greater than 4.1 percent due to a service quality penalty) would reset to 4.1 percent in the next annual filing, with no change to the PRI, which is exactly how Verizon applied the service quality penalties in filings prior to this one. The footnote explicitly states that an increase *to* the productivity offset shall not carry over, but it is silent about any effect that the productivity offset has on the PRI.

For the foregoing reasons, we reject Verizon's proposed adjustment to the productivity factor.

IV. BUSINESS TOUCH-TONE SERVICE RATES

- Introduction

Verizon proposes, among other things, to eliminate the monthly Touch-Tone charge of $1.46 for business customers, resulting in an estimated annual revenue reduction of $15.5 million. The Attorney General objects to the elimination of the charge.

B. Positions of the Parties

1. Verizon

Verizon contends that the Attorney General's argument that the Company's elimination of business Touch-Tone charges is discriminatory is not well-founded, because the Department has not required that Verizon price residence and business services at the same level, nor does state law require the Company to price its service offerings identically across all classes of services (Verizon Brief at 16). Verizon cites the Department's ratemaking policies and historic practice of treating residence and business customers differently as support for its current proposal (Verizon Reply Brief at 7, n.2).

Moreover, the Company indicates that the current basic dial-tone line rates for residence and business customers are different, and business customers pay more for essentially the same service (id. at 7). Verizon disputes the Attorney General's assertion that Verizon's elimination of business Touch-Tone is not cost-based (Verizon Brief at 16). According to the Company, in D.P.U. 94-50, at 496-498, the Department found that Verizon's existing rates, including those for Touch-Tone service, were a just and reasonable starting point and did not require the Company to submit any cost analysis, as the Attorney General erroneously suggests (id. at 16-17). In addition, Verizon points out that the Price Cap Order states that "[b]ecause the price cap plan is designed so that any rate changes will result in just and reasonable rates, compliance with the pricing rules will be considered evidence of the propriety of the proposed rate changes" (id. at 15, citing D.P.U. 94-50, at 220 n.130). Verizon further emphasizes the Department's finding that the Company has the discretion to change prices to produce the overall revenue reduction, as long as those changes are consistent with the applicable pricing rules (id. at 15, citing Bell Atlantic Fourth Price Cap Compliance Filing, D.T.E. 98-67, at 12). According to the Company, compliance with the pricing rules constitutes a prima facie showing that the rates are just and reasonable (id., citing D.T.E. 99-102, at 8, Interlocutory Order on Suspension (January 14, 2000)).

Furthermore, Verizon notes that the Department, in D.T.E. 98-67, approved the Company's reduction of monthly residence Touch-Tone service and the elimination of Touch-Tone charges for private branch exchange ("PBX") trunks (id. at 17). Verizon argues that the elimination of Touch-Tone for non-PBX business customers has the effect of treating all business customers alike, thereby avoiding any potential disparity or competitive disadvantage within the business class (id.).

2. The Attorney General

The Attorney General requests that the Department reject Verizon's plan to continue charging for Touch-Tone service for residential customers as unjustly discriminatory and/or unduly preferential (Attorney General Brief at 7). The Attorney General notes that whatever presumptive effect compliance with the Plan rules may have in connection with the question of whether rates are just and reasonable, that effect is not sufficient to negate the fact that G.L. c. 159, § 14, mandates a just, reasonable, and nondiscriminatory rate structure (id., citing New England Telephone and Telegraph Company v. Department of Public Utilities, 372 Mass. 678, 684 (1977)). According to the Attorney General, the Company's proposal to eliminate charges for Touch-Tone service for its business customers but maintain charges for residential customers is patently discriminatory, and some reasonable justification is necessary if the proposed rate is not to be found to be unduly or irrationally discriminatory (id. at 8, citing Boston Real Estate Board v. Department of Public Utilities, 334 Mass. 477, 495 (1956); Attorney General v. Department of Public Utilities, 390 Mass. 208, 235 (1983)). The Attorney General states that the existence of the Plan does not extinguish the Department's obligation to determine whether the proposed tariff provisions comply with the statutory standards (id., citing G.L. c. 159; AT&T Communications of New England, Inc., D.P.U. 91-79, at 49-50 (1992)).

The Attorney General also argues that none of the factors that have in the past provided justification for rate disparities supports the rates proposed here (id. at 9, citing Attorney General v. Department of Public Utilities, 390 Mass. 208, 235 (1983)). The Attorney General contends that the different treatment of residential and business customers cannot be justified on the grounds of cost differences (id.). Contrary to the Company's suggestions, states the Attorney General, he is not recommending that Verizon be required to price residence and business services at the same rate level (Attorney General Reply Brief at 3). The Attorney General contends that, whatever the Company's argument about the relative cost of providing Touch-Tone service to business and residential customers may be, there is no reasonable basis to suggest that there are no costs involved in providing that service to business customers (Attorney General Brief at 9). The Attorney General notes that the Company concedes in its brief that it does incur 4.5 cents per month to provide Touch-Tone service (Attorney General Reply Brief at 3).

The Attorney General contends that Verizon cannot claim support from the fact that it had previously eliminated the charge for Touch-Tone service provided to PBX customers because the Department's long-standing practice has been to accord little or no precedential weight to its prior acceptance of proposals that were not the subject of any challenge (id.). Moreover, the Attorney General argues that the public policy in favor of competition within the market for local telephone services and protecting such competition from anti-competitive harm are hardly advanced by a proposal that shifts the entire burden for the cost of a service onto those customers least likely to have competitive alternatives (Attorney General Brief at 9).

The Attorney General contends that no evidence has been offered to demonstrate that this discriminatory proposal is rational or defensible on cost, value of service, or policy grounds (Attorney General Reply Brief at 3). Therefore, the Attorney General urges the

Department to reject these rates notwithstanding their compliance with D.P.U. 95-40 (Attorney General Brief at 9).

C. Analysis and Findings

In D.P.U. 94-50, at 498, the Department found that Verizon's then-current rates were reasonable as rates for the starting point under the Price Cap Plan. In addition, the Department found that because the Price Cap Plan is designed so that any rate changes that are in compliance with the pricing rules will result in just and reasonable rates, compliance with the pricing rules will be considered evidence of the propriety of the proposed rate changes. Id. at 220 n.130. As long as it complies with the Price Cap pricing rules, Verizon has the discretion to decide which rates to change to produce the overall revenue reduction. See D.T.E. 98-67, at 10, Suspension Order (August 14, 1998). Compliance with the pricing rules is prima facie evidence of their reasonableness. D.T.E. 99-102, at 8, Suspension Order (January 14, 2000). As we discuss below, the Department finds that Verizon has complied with the Price Cap Plan pricing rules, and therefore its Touch-Tone rates are reasonable.

The Attorney General claims that Verizon's proposal to eliminate Touch-Tone service for business customers is "patently discriminatory" and does not comply with G.L. c. 159, § 14, which mandates that just, reasonable, and nondiscriminatory rate structure. However, we disagree with the Attorney General that the elimination of Touch-Tone service for business customers is unduly discriminatory. See G.L. c. 159, § 14 (prohibiting unjustly discriminatory rates). The Department has never required Verizon to price residence and business services at the same level. See Boston Real Estate Board v. Department of Public Utilities, 334 Mass. 477, 495 (1956) ("that different treatment for different classes of customers, reasonably classified, is not unlawful discrimination is axiomatic in ratemaking"). In fact, Verizon's tariffs in many instances have business rates that are different from residence rates. As the Company has correctly indicated in its brief, business customers still pay more for dial-tone service than residence customers, even though dial-tone service does not cost the Company more for business customers. See Trustees of Clark University v. Department of Public Utilities, 372 Mass. 331, 336 (1977) ("Massachusetts utilities' rates need not be structured on a cost-related basis"). In addition, we note that the Department has made the determination that it serves public policy goals to allow Verizon pricing discretion under the Price Cap Plan. D.P.U. 94-50, at 217-218 (allowing Verizon pricing flexibility); id. at 107-112 (discussing reasons why a price cap plan is preferable to rate of return regulation). For the foregoing reasons, Verizon's different treatment of Touch-Tone service for residential customers is reasonable, and therefore not unduly discriminatory.

Accordingly, the Department allows Verizon to eliminate the Touch-tone service charge for business customers, as proposed.

V. CONCLUSION

As with prior annual filings, the Department must determine whether Verizon has calculated the price cap indices correctly. Except for the Attorney General's issue with the productivity factor adjustment, which we have addressed above, none of the parties challenge Verizon's calculations of the indices. The Department has reviewed the calculations contained in Verizon's filing, and, minus the Company's proposed adjustment to the productivity factor, finds that Verizon has calculated the indices correctly, in compliance with D.P.U. 94-50. In addition, consistent with the findings in the sections above, we find that Verizon has complied with the pricing rules and other directives in D.P.U. 94-50.

Regarding price floors requirements, in D.P.U. 94-50, at 205-206, the Department adopted price floor requirements for Verizon in order to prevent anticompetitive pricing and cross subsidization. In Local Exchange Competition, D.P.U./D.T.E. 94-185-C, at 11 (1997), the Department found that Verizon could satisfy the D.P.U. 94-50 price floors requirements by filing a wholesale tariff for all of its retail services. We find that for purposes of this Fifth Annual Price Cap filing, Verizon has complied with that requirement by making its retail services available for resale through M.D.T.E. No. 14. However, in D.P.U./D.T.E. 94-185-D, at 10-11, the Department clarified its price floors requirements concerning Verizon's toll services. The Department found that for Verizon's retail toll services (excluding premium toll services), Verizon would need to calculate incremental cost price floors, rather than simply relying on a wholesale tariff, to satisfy the Department's previously-existing price floor requirement. Id. The Department is reviewing those price floors for Verizon's non-premium toll services. See D.P.U./D.T.E. 94-185-E. That docket is pending; a decision is expected shortly. Until those price floors for non-premium toll services are established, we will allow Verizon's wholesale tariff to satisfy Verizon's price floor requirements for non-premium toll services. Thus, we also find that Verizon complies with our price floor requirements.

Accordingly, for the above reasons, we approve in part and deny in part Verizon's Fifth Annual Price Cap Compliance Filing. Verizon is required to return to ratepayers the portion of the $20.87 million, plus interest,[(9)] associated with the disallowed productivity factor adjustment, that it has received from ratepayers from the date that Verizon's proposed rate changes went into effect (January 17, 2000) up until the effective date of the new rate changes in its Sixth Annual Price Cap Compliance Filing. This shall be accomplished via a one-time credit to customers per exchange line, as was done in D.T.E. 98-67. See D.T.E. 98-67, at 8 (1999). In its Sixth Annual Price Cap Compliance Filing, which shall be filed on October 1, 2000, Verizon shall propose additional rate reductions to account for the $20.87 million on a going-forward basis.

VI. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That Verizon's Fifth Annual Price Cap Compliance Filing is hereby APPROVED in part and DENIED in part; and it is

FURTHER ORDERED: That Verizon shall comply with all directives herein.

By Order of the Department,

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

_____

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Two other companies sent requests for intervention to the Department. On January 12, 2000, Sprint Communications Company, L.P. filed a Petition for Leave to Intervene. This petition was filed more than two weeks after the intervention deadline (December 28, 1999). The Hearing Officer contacted Sprint and indicated that the petition was insufficient absent a showing of good cause for late-filing. As Sprint neither withdrew the petition, nor made a showing of good cause for late-filing, the Hearing Officer hereby denies the Petition for Leave to Intervene of Sprint Communications Company, L.P.

On January 27, 2000, NEXTLINK Massachusetts, Inc. sent a letter to the Department requesting, among other things, to become a party to this proceeding. NEXTLINK was contacted and given the Department's standards for intervention and late-filed petitions to intervene. On March 2, 2000, the Department received a Late-filed Petition to Intervene from NEXTLINK. As NEXTLINK's petition did not make a showing of good cause for late-filing, the Hearing Officer hereby denies the Late-filed Petition to Intervene of NEXTLINK Massachusetts, Inc.

2. On January 23, 2000, NEPCC propounded discovery on Verizon, and on January 31, 2000, NEPCC filed Comments in Support of Discovery Request (which consisted of a request for evidentiary proceedings). On February 4, 2000, NEPCC withdrew its request for evidentiary proceedings.

3. For a detailed summary of the rate changes proposed by Verizon in its November 17, 1999 compliance filing, see Bell Atlantic-Massachusetts' Fifth Annual Price Cap Compliance Filing, D.T.E. 99-102, at 2-4, Interlocutory Order on Suspension (January 14, 2000) ("Interlocutory Order on Suspension").

4. The PRI is calculated using the following formula: PRI (new) = PRI (current) X (1 + PRI Adjustment/100), where the PRI Adjustment is the result of the percent change in the GDP-PI minus the productivity factor (including any retail service-penalty adjustment) plus exogenous changes, if any.

5. GDP-PI stands for gross domestic product-price index and serves as a measure of the change in national output prices. The productivity factor or offset represents a productivity differential between the local exchange carriers' productivity and the productivity of the economy as a whole minus any retail service penalty adjustment. Exogenous changes consist of changes in tax laws that uniquely affect the telecommunications industry, mandated jurisdictional separation changes, accounting, regulatory, judicial, or legislative changes uniquely affecting the telecommunications industry.

6. In D.P.U. 94-50, the Department approved a service quality index ("SQI") whereby (1) failure to achieve 33 points in the measurement of the SQI in any month will result in an increase of one-twelfth of one percent in the productivity factor in the subsequent annual filing, and (2) when three or more of the twelve individual service items that comprise the SQI fall below the standard threshold in any month, there will be an increase of one-twelfth of one percent in the productivity factor in the subsequent annual filing. D.P.U. 94-50, at 238.

7. In fact, we note that Verizon itself proposed that "[t]he Plan does not allow [Verizon] to petition the Department for any exceptions to the first pricing rule." D.P.U. 94-50, at 76 (citation omitted). The first pricing rule governs the allowable change in the weighted-average price of all tariffed services by placing a ceiling on that change. Under the first pricing rule, the Actual Price Index must be equal to or less than the PRI. Id.

8. See, e.g., D.P.U./D.T.E. 97-67, at 11-12 (June 22, 1998), "[n]one of the pricing rules requires the rate changes proposed by the DOD/FEAs . . . Therefore, we find that the DOD/FEAs claims are without merit." See also, D.T.E. 98-67, at 10, Interlocutory Order on Suspension (August 14, 1998), "[c]oncerning AT&T's switched access rates argument [asking for reductions to carrier switched-access rates], we note that, as long as it complies with the Price Cap pricing rules, [Verizon] has the discretion to decide which rates to change to produce the overall revenue reduction"; D.T.E. 98-67, at 14-15 (October 22, 1999), ". . . [A]s long as [Verizon] complies with the pricing rules of its Price Cap Plan, the Company has the flexibility to determine what rate changes to make in order to produce the desired overall revenue reductions . . . Therefore, we find that the DOD/FEAs claims are without merit"; D.T.E. 99-102, at 8 Interlocutory Order on Suspension (January 14, 2000), "[r]egarding the Attorney General's argument that Touch-Tone rates may be discriminatory, we note that, as long as it complies with the Price Cap pricing rules, [Verizon] has the discretion to decide which rates to change to produce the overall revenue reduction."

9. See D.T.E. 98-67, at 8 (1999) for interest calculation.